

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIOT BROIDY, et al., : Docket #19-cv-11861

Plaintiffs, :

-against- :

GLOBAL RISK ADVISORS, LLC, : New York, New York
et al, : January 19, 2024

Defendants.

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PROCEEDINGS BEFORE
THE HONORABLE MARY KAY VYSKOCIL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 THE COURT: All right. Good afternoon,
2 Mr. Algor and Mr. Burgo.

3 Is there anyone else for the plaintiffs?

4 MR. ALGOR: No, Your Honor.

5 THE COURT: All right. Thank you.

6 And for the defendants?

7 MR. WEINSTEIN: Good afternoon, Your Honor.

8 On behalf of the defendants from Hughes
9 Hubbard & Reed, this is Marc Weinstein, along with
10 Kevin Carroll, Amina Hassan and Kiran Rosenkilde.

11 THE COURT: All right. So good afternoon
12 to all of you.

13 I don't think I have Kiran Rosenkilde on my
14 appearance sheet, but good afternoon to all of you.

15 Do we have any other appearances?

16 MR. WEINSTEIN: Not for defendants,
17 Your Honor.

18 THE COURT: All right. Thank you, then.

19 So we're here for an initial pretrial
20 conference in this case. I'm holding the conference
21 telephonically, frankly, to save the clients some
22 money and for the convenience of counsel, but this
23 is a formal court hearing, as if we were in open
24 court, so I'm going to remind you of a couple of
25 ground rules.

1 First, you are prohibited from recording or
2 rebroadcasting today's hearing.

3 Ms. Dempsey, are you recording?

4 THE DEPUTY CLERK: Yes, Your Honor.

5 THE COURT: Okay. But no one else on the
6 call is authorized to record or broadcast today's
7 hearing. Is that understood by everyone?

8 MR. ALGOR: Yes, Your Honor.

9 MR. WEINSTEIN: Yes, for defense counsel,
10 Your Honor.

11 THE COURT: All right. Thank you.

12 So I'm going to ask everyone, please
13 just -- when you address the Court, please state
14 your name because we have a lot of people on the
15 line. It's going to be very hard to follow who it
16 is that is speaking. And please just try to speak
17 one at a time. And I assure you I will give
18 everyone an opportunity to be heard, but we need to
19 have a little bit of order on the call.

20 So, as I say, we're here for an initial
21 pretrial conference in this case. This case is over
22 five years old, or going on five years old, and it
23 is simply unacceptable that virtually no discovery
24 has happened in this case. Most particularly since
25 November of last year, I ordered, after I denied the

1 motion to dismiss, that the parties were to commence
2 discovery immediately if they hadn't already done
3 so. And I made it clear that, at a minimum, initial
4 disclosures should take place. So this is just not
5 acceptable and this case has to move. So that's
6 just a preliminary comment about the state of
7 things.

8 So I have your letter. I have your
9 proposed case management plan, which frames a number
10 of the issues that I want to talk to you about. So
11 I think it's most efficient if you would all pull
12 out the proposed case management plan and we just
13 work our way through it. And then if there are
14 issues related to any particular item that I don't
15 recall to address, you can let me know that. Okay?

16 So with respect to the case management
17 plan, I just want to confirm with each side that you
18 are not consenting to proceeding before a magistrate
19 judge, which is, of course, fine, and your right,
20 and that the case is to be tried to a jury.

21 So let me ask, first, counsel for the
22 plaintiff.

23 Mr. Benson, are you taking the lead?

24 MR. BENSON: Yes, Your Honor.

25 THE COURT: All right. So is that, in

1 fact --

2 MR. BENSON: That's correct, Your Honor.

3 THE COURT: All right. And how about for
4 the defense? Who's taking the lead for the defense?
5 Is that you, Mr. Weinstein?

6 MR. WEINSTEIN: Yes, Your Honor. And that
7 is also correct from the defense perspective.

8 THE COURT: All right. Now, with respect
9 to amended pleadings, absolutely, positively not
10 that amended pleadings filed after all discovery is
11 complete. That's just crazy. I mean, that would
12 require reopening of discovery, so I am positively
13 not ordering that.

14 The complaint has been amended already in
15 this case, and I am not permitting 14 days after the
16 close of discovery. I will revert back to what my
17 form says; that any motions to amend need to be
18 filed within 14 days of this order. And it needs to
19 be on good cause, given that plaintiffs have already
20 filed three separate complaints.

21 MR. BENSON: Understood, Your Honor.
22 Daniel Benson, for plaintiffs.

23 Our only concern is that if discovery turns
24 up people who were involved, who we -- whose
25 identities we didn't know about or couldn't have

1 known about, we may want to seek to add them as
2 defendants, but I fully understand that that should
3 be done before the completion of discovery.

4 THE COURT: If you have something you
5 discover and you think you have a meritorious
6 motion, you know, for good cause shown, I would hear
7 you, but the rule is amend within 14 days of the
8 order that I'm going to enter after we conclude
9 today.

10 All right.

11 MR. BENSON: Understood, Your Honor.

12 THE COURT: Discovery, initial disclosures
13 should already have been exchanged. Have they been
14 or not?

15 MR. BENSON: Yes, Your Honor.

16 THE COURT: Who was that speaking? The
17 plaintiff?

18 MR. BENSON: I'm sorry. Daniel Benson for
19 the plaintiffs.

20 THE COURT: All right. And you've made
21 your initial --

22 MR. BENSON: Initial disclosures have been
23 exchanged.

24 THE COURT: Okay. Both sides?

25 MR. BENSON: Yes.

1 THE COURT: All right. So I'm going to
2 amend -- note that they have been made as required
3 by Rule 26.

4 With respect to fact discovery, I am not
5 allowing nine months, basically, for discovery.
6 It's, as I say, a five-year-old case, so it's simply
7 not acceptable. I am amending this to my standard
8 120-day rule. If, as you go through discovery,
9 there are issues or reasons to indicate that you
10 need longer, then you can come back to the Court and
11 explain that. And don't wait until the last minute.
12 You can come back and you can ask for more time, but
13 I'm not allowing at the outset until September.

14 All right. So with respect to -- I'll put
15 in May 20th. Today is the 19th. Let me just look
16 at something.

17 Yeah, the 19th of May is a weekend, so
18 May 20th is more than reasonable.

19 Now, with respect to all of these initial
20 deadlines in -- I thought it was paragraph 7 of my
21 standard order, so I don't know if you changed the
22 numbering. With respect to these interim deadlines
23 that you have in paragraph 6, you need to adjust
24 them, bearing in mind that your overall fact
25 discovery is May 20th.

1 Now, as I say in my standard form, I don't
2 really care what you have as your interim deadlines.
3 You should just agree to that. And if you don't
4 agree to it, then you can serve discovery whenever
5 you want. You just need to get it completed by the
6 outside discovery cutoff date.

7 So paragraph 6, as you now have it drafted,
8 is basically not workable, although, I guess, some
9 of these -- well, it's certainly not an August
10 deadline. So the interim deadlines -- I'm just
11 going to annotate that it should -- amended by the
12 parties to have everything completed by the
13 discovery cutoff. Understood?

14 MR. WEINSTEIN: Your Honor -- yes,
15 Your Honor. It's Marc Weinstein for defendants, if
16 I may.

17 The dates within -- the proposed dates in
18 paragraph 6, each of defendant's position is based
19 on the May 20th date that Your Honor has now imposed
20 as the discovery cutoff. And I think the parties
21 didn't disagree as to how much before the ultimate
22 close-of-discovery thing should be done. So the
23 dates that defendants have proposed should be
24 workable within Your Honor's, May 20th deadline.

25 THE COURT: But, as I say, I'm going to

1 just annotate this to say the parties can agree to
2 it because the issue that I have is defendant
3 proposes some deadlines of April 19th, which is
4 roughly 30 days before the end of the fact-discovery
5 period. If you wait until 30 days before the end of
6 the discovery period to first serve interrogatories,
7 you are allowing one-day cushion to get responses.
8 And if you get responses that you don't like or that
9 call for follow-up discovery, you are allowing
10 yourself no time to do that. So I don't think these
11 interim deadlines, as proposed by either side, make
12 a lot of sense.

13 So that was the next point I was going to
14 make to you. I'm going to amend this to say that
15 the parties should be -- you know, should pick
16 whatever interim deadlines they want, bearing in
17 mind the admonition that I have -- I don't know why
18 you changed all these numbers, but paragraph -- you
19 know, you need to bear in mind what is now
20 paragraph 9 and my individual practice rules, which
21 make it very clear that it is not a reason for an
22 extension of discovery to say, well, I made a motion
23 and I'm waiting for follow-up discovery.

24 Understood?

25 MR. WEINSTEIN: Yes, Your Honor.

1 MR. BENSON: Yes, Your Honor. Daniel
2 Benson for the plaintiffs.

3 THE COURT: Now, with respect to all of
4 that, as I understand it, there is a dispute with
5 respect to the number of depositions. As of now,
6 the federal rule governs, and the standard limit is
7 what's in place. If somebody believes they have
8 good cause to need more than that, you can file an
9 application if you can't work it out with the other
10 side, but I'm not ordering right now that 20
11 depositions are fine. So absent the granting of an
12 application for relief or something worked out
13 between the parties, I am not ruling on this and
14 allowing 20 fact depositions.

15 I also do have concerns about what seems to
16 be contemplated as the breadth of discovery here.
17 But, again, I'm not going to render, you know,
18 advisory opinions. You're two experienced,
19 professional firms; if you can't work cooperatively
20 on all of this, follow my individual rules. Bring
21 to the Court's attention any discovery disputes that
22 you have, but I'm not going to issue blanket rulings
23 about the breadth of discovery. But discovery needs
24 to be, you know, relevant to issues in the case now.

25 And the same thing with respect to

1 protective order. You know, frankly, as best I read
2 what you're all saying, plaintiffs haven't conferred
3 with the defendants yet. They've told the
4 defendants, though, that they intend to call this
5 anonymous declarant or confidential witness at
6 trial, so you're going to need to disclose the
7 identity because there's a right to depose that
8 person. So, at some point, you-all ought to talk to
9 each other and work out a consensual protective
10 order. If you can't do that, then you submit
11 competing versions or one version with whatever
12 language is in dispute highlighted to show each
13 side's position, and the Court will resolve it. But
14 these are not the kinds of things that you ought to
15 have to bother a Court with.

16 So those are my thoughts with respect to
17 the various discovery issues that you've highlighted
18 in your joint letter.

19 In terms of expert discovery, it's
20 correspondingly going to key off of the fact
21 discovery cutoff. So the July deadline is the one
22 that's going to govern.

23 I assume both sides think you need experts.

24 MR. BENSON: Daniel Benson, for plaintiffs.
25 Yes, Your Honor.

1 THE COURT: On what issues?

2 MR. BENSON: On how the hacking was carried
3 out and the like.

4 THE COURT: I see. All right.

5 MR. BENSON: Those are technical issues.

6 THE COURT: All right. Yeah, I said, "all
7 right."

8 Bear in mind, then, that this order
9 instructs you to talk to each other before fact
10 discovery is over, to start anticipating how you're
11 going to conduct expert discovery. In other words,
12 agree with each other on are you going to exchange
13 reports. If so, when are they due. Are you going
14 to depose experts? And if so, what is the schedule
15 for depositions of experts. All right?

16 MR. BENSON: Will do, Your Honor.

17 THE COURT: Your inserted paragraph 8 is
18 coming out of the final order. That's not part of
19 my order. And I've told you that I'm not going to
20 rule, so I'm annotating it to say the Court declines
21 to grant leave at this time, but it's without
22 prejudice to a proper motion. And a proper motion
23 is one that tells me who it is that you want to
24 depose beyond the ten and why you need them.

25 All right. Now, let me just talk to you

1 about settlement. I mean, you-all just filled this
2 out with not applicable, not applicable, not
3 applicable. I appreciate that you do need some
4 discovery or some evidence to have some kind of a
5 meaningful dialogue because, as I understand it,
6 it's defendants' position that there was no hacking,
7 or that they didn't participate in any hacking, and
8 the plaintiff says it did. So until you have some
9 exchange of information, I can understand that a
10 dialogue won't be productive.

11 Having said that, at some point, I am going
12 to direct you to participate in some form of
13 alternative dispute resolution. And so the question
14 is: Have you agreed on what that mechanism ought to
15 be?

16 MR. BENSON: Daniel Benson, Your Honor.

17 We have not, but we're certainly willing,
18 as on all these other subjects that have come up, to
19 confer with the defendants' defense counsel, and I'm
20 sure we can reach an appropriate agreement.

21 THE COURT: All right. Do you have a view
22 one way or another?

23 I mean, the options are referral to a
24 magistrate judge, referral to the Court's mediation
25 system, or you talk to each other and you engage a

1 private mediator.

2 I have to say, given the issues in this
3 case and the level of disagreements on virtually
4 everything, I'm likely going to have to refer
5 things -- I've already referred things to the
6 magistrate judge, which is Magistrate Judge Willis.
7 So I'm not certain that she's going to be in the
8 best position to try to help you resolve the case.

9 I don't know whether the Court's mediation
10 system includes anybody on its roster that you think
11 will be able to help you. My own instinct is you're
12 probably going to need to retain a private mediator.

13 MR. BENSON: Plaintiffs are certainly open
14 to that. Excuse me, Your Honor.

15 THE COURT: All right. No problem. Who
16 was that, though?

17 MR. BENSON: Daniel Benson.

18 Plaintiffs are certainly open to talking
19 with defendants about possibly, I think, at the
20 appropriate time, retaining a private mediator.

21 THE COURT: All right.

22 And, Mr. Weinstein, do you have a reaction?

23 MR. WEINSTEIN: Your Honor, at this point,
24 we're amenable to really, any of the three
25 possibilities that the Court would choose or not

1 choose, but would ultimately impose. But also agree
2 with Your Honor, that, you know, it has been our
3 position that our clients just weren't involved at
4 all. Until there's some exchange of information to
5 the contrary, it is difficult to even, you know,
6 analyze, you know, whether there would be a
7 difference in outcome depending on the type of
8 mediator selected.

9 THE COURT: All right. Well, I mean, I
10 said that. I think you need to exchange some
11 information, but I will tell you as well that both
12 the Court mediators -- frankly, the magistrate
13 judges as well, they tell me -- and certainly any
14 private mediator that you're going to retain has a,
15 you know, lead time. You're not going to get a
16 hearing with anybody -- I doubt you're going to get
17 it in the next 30 or 60 days.

18 So it makes sense for you to talk now about
19 which route you want to go. And if you are in
20 agreement to hire a private mediator, which my, you
21 know, experience litigating for close to 35 years
22 tells me is probably going to be the most
23 productive, you really need to start talking about
24 who that person ought to be, if you can agree, and
25 reaching out to that person to get on their calendar

1 for sometime around the spring of this year, by
2 which time you should have made significant progress
3 in discovery.

4 So I'm simply going to annotate this to say
5 that the parties should confer about preferred ADR
6 approach and report back to the Court in 30 days
7 because, as I say, within 30 days, you really need
8 to decide which avenue you're going to pursue and
9 then start making contact with either the mediator
10 or the magistrate judge so you can get on that
11 person's calendar for sometime thereafter.

12 All right?

13 MR. BENSON: Yes, Your Honor.

14 THE COURT: Any issue with that?

15 MR. BENSON: No issue from plaintiffs'
16 side, Your Honor.

17 THE COURT: All right. Now, the final --

18 MR. WEINSTEIN: Nor from defendants.

19 THE COURT: Okay. So the final thing I
20 want to talk to you about is your proposed estimate
21 for the length of trial. I'm just going to annotate
22 right now to tell you three weeks is an unreasonably
23 long expectation. Frankly, I think two weeks is
24 probably unreasonably long. But right now, without
25 knowing anything about what the facts are here, I

1 can't really say, but I am going to annotate this to
2 tell you three weeks is not going to happen, and
3 that even a two-week estimate appears to be
4 unreasonably long, and the parties need, during the
5 course of discovery, to think about how to
6 streamline things so that you can try this case more
7 efficiently if we have to get there. Okay?

8 MR. BENSON: Yes, Your Honor.

9 THE COURT: Now, is there anything else,
10 then, that we can accomplish from the plaintiff?

11 MR. BENSON: Your Honor, Daniel Benson. I
12 don't have anything at this time.

13 THE COURT: Okay.

14 Mr. Weinstein?

15 MR. WEINSTEIN: No, Your Honor.

16 Your Honor's guidance has been very clear.
17 Thank you.

18 THE COURT: Okay. Usually, I have the
19 parties in for a post-discovery conference. I'm
20 probably going to have you in for a further status
21 conference at some time later in the early
22 springtime, just to make sure we're on track and
23 keep everything moving.

24 As I say, this case is way too long, and
25 it's soon going to appear on my, you know, internal

1 administrative office of the court list of cases
2 that are improperly stale or old, so you need to
3 move. Okay?

4 MR. BENSON: Understood, Your Honor.

5 THE COURT: With that, then, we'll stand
6 adjourned. I wish everyone a good rest of the day
7 and a nice weekend.

8 MR. BENSON: Thank you, Your Honor. You,
9 too.

10 THE COURT: Thank you. Bye-bye.

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C E R T I F I C A T E

I, Adrienne Mignano, RPR, certify that the foregoing transcript of proceedings in the case of Broidy et al v. Global Risk Advisors LLC et al, Docket #1:19-cv-11861-MKV-JW, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature

Adrienne Mignano

Adrienne Mignano, RPR

Date: January 23, 2024